IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHELSEA KOENIG	:	CIVIL ACTION
	:	
v.	:	NO. 16-1396
	:	
GRANITE CITY FOOD & BREWERY, LTD.	:	

ORDER

AND NOW, this 11th day of May 2017, following discovery on conditional certification and class certification granted by this Court (ECF Doc. Nos. 38, 48) and after considering Plaintiff's Motion to conditionally certify an Fair Labor Standards Act collective action (ECF Doc. No. 55), Plaintiff's Motion to certify a class action under Rule 23 (ECF Doc. No. 58), Defendant's Response to both Motions (ECF Doc. No. 60) and for reasons more fully described in the accompanying Memorandum, it is **ORDERED** Plaintiff's Motions (ECF Doc. Nos. 55, 58) are **GRANTED** upon our findings:

I. We conditionally certify a collective action under the Fair Labor Standards Act.

1. We conditionally certify this action to proceed as a collective action under the Fair Labor Standards Act on behalf of:

> **All former and current Tipped Employees (such as server, bartender, busser, food runner) of Cadillac Ranch All American Bar & Grill in Pennsylvania, Maryland, Florida, or Indiana at any time from September 9, 2013 to the date the tipped employee signed Cadillac Ranch's January 2017 Tip Credit Policy.**

2. **Collective Findings.** Plaintiff makes a modest factual showing Cadillac Ranch's tipped employees at its five locations are "similarly situated." Plaintiff adduced evidence Cadillac Ranch failed to provide her sufficient notice of its utilization of the tip credit. Plaintiff

adduced evidence Cadillac Ranch used the tip credit for tipped employees and used the same compensation policy and employee handbook to inform tipped employees about their compensation across all five locations. This evidence is sufficient to satisfy our first-tier review of Plaintiff's "modest factual showing" all tipped employees are "similarly situated" for purposes of receiving tip credit notification from Cadillac Ranch.

3. **Draft Notice to the collective.** Plaintiff shall circulate a draft court-facilitated notice and protocol to Defendant no later than **May 18, 2017**, Defendant shall comment upon the draft and protocol to Plaintiff by **May 25, 2017**, and Plaintiff shall move for approval of her proposed Court-facilitated notice with a memorandum not exceeding ten (10) pages and identifying all areas of disagreement on the notice in an attached black-lined version of the proposed Notice on or before **June 1, 2017**. Defendant may file memoranda not exceeding ten (10) pages explaining its position on any dispute with the proposed protocol or proposed black-lined notice on or before **June 6, 2017**.

II. We certify a Rule 23(b)(3) class action under Pennsylvania's Minimum Wage Act.

1. We certify the Pennsylvania claims alleging Defendant violated Pennsylvania's Minimum Wage Act by: (1) failing to meet tip credit notification requirements; (2) failing to pay tipped employees full minimum wage when they performed non-tipped work; (3) claiming a tip credit in excess of amounts permitted by Pennsylvania law; and, (4) forcing tipped employees forfeit tips when customers walked out or the employee had a cash shortage to proceed as a class action under Fed. R. Civ. P. 23 on behalf of the defined "Class":

> **All former and current tipped employees (such as server, bartender, busser, food runner) of Cadillac Ranch All American Bar & Grill in Pennsylvania at any time from September 9, 2013 to the date the tipped employee signed Cadillac Ranch's January 2017 Tip Credit Policy.**

2. **Class Findings**. As more fully detailed in the accompanying Memorandum, we find Federal Rule of Civil Procedure 23(a) and (b)(3) requirements are amply satisfied:

a. **Numerosity.** The Class is sufficiently numerous with approximately 220 members;

b. **Commonality.** The Class has commonality because Cadillac Ranch used standardized procedures to inform its employees about the tipped credit and standardized compensation calculation for all tipped employees;

c. **Typicality.** Plaintiff's claim is typical of the Class because Cadillac Ranch used the same payroll system and same tip credit provision for Ms. Koenig and the tipped employees. Cadillac Ranch also raises the same defenses of proper notice and proper calculation of minimum wages for all tipped employees;

d. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class because she shares the same claims as the Class and has no antagonistic interests to the Class. Gerald D. Wells, III, Esquire and the law firm Connolly Wells & Gray, LLP are qualified, experienced, and able to conduct this litigation.

e. **Predominance.** Plaintiff and the Class share the predominate cause of action alleging Cadillac Ranch violated Pennsylvania's Minimum Wage Act by: (1) failing to meet tip credit notification requirements; (2) failing to pay tipped employees full minimum wage when they performed non-tipped work; (3) claiming a tip credit in excess of amounts permitted by Pennsylvania law; and, (4) forcing tipped employees forfeit tips when customers walked out or the employee had a cash shortage; and,

f. **Superiority.** A class action is the superior method for adjudication for the Class' minimum wage claims because of the small size of individual recoveries.

3. **Class Representative.** Chelsea Koenig is an adequate representative of the Class and we certify her as the Class representative.

4. **Class Counsel**. Lead Plaintiff's counsel Connolly Wells & Gray, LLP is authorized to act on behalf of the Class with respect to all actions required by, or necessary to be taken under, the Rules of Civil Procedure and this Court's Orders and Policies.

5. **Notice to the Class.** Class Counsel shall circulate a draft court-facilitated notice and protocol compliant with Fed.R.Civ.P. 23(c)(2)(B) to Defendant's counsel no later than **May 18, 2017**, Defendant shall comment upon the draft and protocol to Plaintiff by **May 25, 2017**, and Plaintiff shall move for approval of the proposed Court-facilitated notice with a memorandum not exceeding ten (10) pages and identifying all areas of disagreement on the notice in an attached black-lined version of the proposed Notice on or before **June 1, 2017**. Defendant may file memoranda not exceeding ten (10) pages explaining its position on any dispute with the proposed protocol or proposed black-lined notice on or before **June 6, 2017**.

KEARNEY, J.